

such records in coordination with the Center Protective Service Offices.

(2) The Archivist shall conduct a systematic declassification review program for classified records:

(i) Accessioned into the National Archives;

(ii) Transferred to the Archivist pursuant to 44 U.S.C. 2203; and

(iii) For which the National Archives serves as the custodian for an agency or organization that has gone out of existence.

(3) The Chairperson, NISPC, shall designate experienced personnel to assist the Archivist in the systematic review of U.S. originated information and foreign information exempted from automated declassification. Such personnel shall:

(i) Provide guidance and assistance to the National Archives and Records Service in identifying and separating documents and specific categories of information within documents which are deemed to require continued classification; and

(ii) Develop reports of information or document categories so separated, with recommendations concerning continued classification.

(iii) Develop, in coordination with NASA organizational elements, guidelines for the systematic review for declassification of classified information under NASA's jurisdiction. The guidelines shall state specific limited categories of information which, because of their national security sensitivity, should not be declassified automatically, but should be reviewed to determine whether continued protection beyond 25 years is needed. These guidelines are authorized for use by the Archivist and the Director of the Information Security Oversight Office, with the approval of the Senior Agency Official, which is the Assistant Administrator, Office of Protective Services, for categories listed in section 3.3 of the Order. These guidelines shall be reviewed at least every five years and revised as necessary, unless an earlier review for revision is requested by the Archivist. Copies of the declassification guidelines promulgated by NASA will be provided to the Information Security Oversight Office, National Archives and Records Administration

(NARA). All security classified records exempt from automatic declassification, whether held in storage areas under installation control or in Federal Records Centers, will be surveyed to identify those requiring scheduling for future disposition.

(A) Classified information or material over which NASA exercises exclusive or final original classification authority and which is to be declassified in accordance with the systematic review guidelines shall be so marked.

(B) Classified information or material over which NASA exercises exclusive or final original classification authority and which, in accordance with the systematic review guidelines is to be kept protected, shall be listed by category by the responsible custodian and referred to the Chairperson, NASA Information Security Program Committee. This listing shall:

(1) Identify the information or material involved.

(2) Recommend classification beyond 25 years to a specific event scheduled to happen or a specific period of time in accordance with the Order.

(3) The Administrator shall delegate to the Senior Agency Official the authority to determine which category shall be kept classified and the dates or event for declassification.

(4) Declassification by the Director of the Information Security Oversight Office (DISOO). If the Director determines that NASA information is classified in violation of the Order, the Director may require the information to be declassified. Any such decision by the Director may be appealed through the NASA ISPC to the National Security Council. The information shall remain classified pending a prompt decision on the appeal.

(b) [Reserved]

[78 FR 5120, Jan. 24, 2013]

**§ 1203.604 Mandatory review for declassification.**

(a) *Information covered.* Except as provided in paragraph (b) of this section, all information classified under the Order or predecessor orders shall be subject to a review for declassification by the originating agency if:

(1) The request for a review describes the document or material containing

the information with sufficient specificity to enable the agency to locate it in a reasonably timely manner;

(2) The document or material containing the information responsive to the request is not contained within an operational file exempted from search and review, publication, and disclosure under 5 U.S.C. 552 in accordance with law; and

(3) The information is not the subject of pending litigation.

(b) *Presidential papers.* Information originated by the President or Vice President; the President's White House Staff, or the Vice President's Staff; committees, commissions, or boards appointed by the President; or other entities within the Executive Office of the President that solely advise and assist the President are exempted from the provisions of paragraph (a) of this section. However, the Archivist shall have the authority to review, downgrade, and declassify papers or records of former Presidents and Vice Presidents under the control of the Archivist pursuant to 44 U.S.C. 2107, 2111, 2111 note, or 2203. Procedures developed by the Archivist shall provide for consultation with agencies having primary subject matter interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective Presidential papers or records. Agencies with primary subject matter interest shall be notified promptly of the Archivist's decision. Any final decision by the Archivist may be appealed by the requester or an agency to the Panel. The information shall remain classified pending a decision on the appeal.

(c) *Submission of requests for review.* Requests for mandatory review of classified information shall be submitted in accordance with the following:

(1) Requests originating within NASA shall, in all cases, be submitted directly to the NASA Office of Protective Services.

(2) For the most expeditious action, requests from other Governmental agencies or from members of the public should be submitted directly to the NASA Office of Protective Services only. The requestor may submit the request to: National Aeronautics and Space Administration (NASA), Central

Registry, 300 E Street SW., Washington DC 20546, Attention: Office of Protective Services/Information Security Program Manager. The phrase, "Mandatory Declassification Review," must be stated in the request.

(d) *Requirement for processing.* (1) Requests which are submitted under the Freedom of Information Act cannot be processed under the MDR process.

(2) The request describes the document or material containing the information with sufficient specificity, such as accession numbers, box titles or numbers, date and title of document, in any combination, to enable NASA to locate it with a reasonable amount of effort, not to exceed 30 days. If more time is required, NASA will notify the requester. After review, the information or any portion thereof that no longer requires protection shall be declassified and released unless withholding is otherwise warranted under applicable law.

(e) *Processing of requests.* Requests that meet the requirements of paragraph (d)(2) of this section will be processed as follows:

(1) The NASA Office of Protective Services review upon receiving the initial request shall be completed within 365 days.

(2) Receipt of the request shall be acknowledged promptly. The NASA Office of Protective Services shall determine whether, under the declassification provisions of this part 1203, the requested information may be declassified and, if so, shall make such information available to the requestor, unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requestor shall be given a brief statement of the reasons for denial, a notice of the right to appeal the determination to the Chairperson, NASA Information Security Program Committee, National Aeronautics and Space Administration, Washington, DC 20546, and a notice that such an appeal must be filed within 60 days in order to be considered.

(3) All appeals of denials of requests for declassification shall be acted upon and determined finally within 120 working days after receipt, and the requester shall be advised that the appeal

determination is final. If the requester is dissatisfied with NASA's appeal decision, the requester may initiate an appeal to the Interagency Security Classification Appeals Panel (ISCAP), within the Information Security Oversight Office. If continued classification is required under the provisions of this part 1203, the requester shall be notified of the reasons thereof.

(4) The declassification and release of foreign government information that is subjected to mandatory review under this section shall be determined only in accordance with § 1203.703.

(5) When the NASA Office of Protective Services receives any request for declassification of information in documents in its custody that was classified by another Government agency, it shall refer copies of the request and the requested documents to the originating agency for processing and may, after consultation with the originating agency, inform the requester of the referral.

(f) *Neutral response.* In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of "the Order," NASA shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under "the Order."

(g) *Declassification of transferred documents or material—(1) Material officially transferred.* In the case of classified information or material transferred by or pursuant to statute or Executive Order to NASA in conjunction with a transfer of functions (not merely for storage purposes) for NASA's use and as part of its official files or property, as distinguished from transfers merely for purposes of storage, NASA shall be deemed to be the original classifying authority over such material for purposes of downgrading and declassification.

(2) *Material not officially transferred.* When NASA has in its possession classified information or material originated by an agency which has since ceased to exist and that information has not been officially transferred to another department or agency or when it is impossible for NASA to identify the originating agency and a review of the material indicates that it should be

downgraded or declassified, NASA shall be deemed to be the originating agency for the purpose of declassifying or downgrading such material. NASA will consult with the Information Security Oversight Office to assist in final disposition of the information.

(3) *Transfer for storage or retirement.*

(i) Insofar as practicable, classified documents shall be reviewed to determine whether or not they can be downgraded or declassified prior to being forwarded to records centers or to the National Archives for storage. Any downgrading or declassification determination shall be indicated on each document by appropriate markings.

(ii) Classified information transferred to the General Services Administration for accession into the Archives of the United States shall be downgraded or declassified by the Archivist of the United States in accordance with "the Order," the directives of the Information Security Oversight Office, GSA, and NASA guidelines.

(h) *Downgrading and declassification actions—(1) Notification of changes in classification or declassification.* When classified material has been marked with specific dates or events for downgrading or declassification, it is not necessary to issue notices of such actions to any holders. However, when such actions are taken earlier than originally scheduled, or the duration of classification is shortened, the authority making such changes shall, to the extent practicable, ensure prompt notification to all addressees to whom the information or material was originally transmitted. The notification shall specify the marking action to be taken, the authority therefor, and the effective date. Upon receipt of notification, recipients shall effect the proper changes and shall notify addressees to whom they have transmitted the classified information or material.

(2) *Posted notice.* If prompt remarking of large quantities would be unduly burdensome, the custodian may attach declassification, downgrading, or upgrading notices to the storage unit in lieu of the remarking action otherwise required. Each notice shall indicate the change, the authority for the action, the date of the action, and the storage

units to which it applies. Items withdrawn from such storage units shall be promptly remarked. However, when information subject to a posted downgrading or declassification notice is withdrawn from one storage unit solely for transfer to another, or a storage unit containing such information is transferred from one place to another, the transfer may be made without remarking if the notice is attached to or remains with each shipment.

(i) *Foreign Relations Series*. In order to permit the State Department editors of *Foreign Relations of the United States* to meet their mandated goal of publishing 20 years after the event, NASA shall assist these editors by facilitating access to appropriate classified materials in its custody and by expediting declassification review of items from its files selected for publication.

(ii) [Reserved]

[44 FR 34913, June 18, 1979, as amended at 45 FR 3888, Jan. 21, 1980; 48 FR 5892, Feb. 9, 1983; 53 FR 41318, Oct. 21, 1988; 78 FR 5120, Jan. 24, 2013]

EDITORIAL NOTE: At 78 FR 5120, Jan. 24, 2013, §1203.604 was amended in part by revising paragraphs (d)(3) and (4); however, the amendatory instruction could not be incorporated completely because (d)(3) and (4) did not exist.

### Subpart G [Reserved]

### Subpart H—Delegation of Authority To Make Determinations in Original Classification Matters

SOURCE: 62 FR 54380, Oct. 20, 1997, unless otherwise noted.

#### § 1203.800 Establishment.

Pursuant to Executive Order 13526, “Classified National Security Information,” and The Space Act, in accordance with U.S.C. Title 51, National and Commercial Space Program Sections 20132 and 20133, there is established a NASA Information Security Program Committee (as part of the permanent administrative structure of NASA). The NASA Assistant Administrator for Protective Services, or designee, shall be the Chairperson of the Committee. The Information Security Program Manager, NASA Office of Protective

Services, is designated to act as the Committee Executive Secretary.

[78 FR 5121, Jan. 24, 2013]

#### § 1203.801 Responsibilities.

(a) The Chairperson reports to the Administrator concerning the management and direction of the NASA Information Security Program as provided for in subpart B of this part. In this connection, the Chairperson is supported and advised by the Committee.

(b) The Committee shall act on all appeals from denials of declassification requests and on all suggestions and complaints with respect to administration of the NASA Information Security Program as provided for in subpart B of this part.

(c) The Executive Secretary of the Committee shall maintain all records produced by the Committee, its subcommittees, and its ad hoc panels.

(d) The Office of Protective Services will provide staff assistance and investigative and support services for the Committee.

[78 FR 5121, Jan. 24, 2013]

#### § 1203.802 Membership.

The Committee membership will consist of the Chairperson, the Executive Secretary, and one person nominated by each of the following NASA officials:

- (a) The Associate Administrators for:
  - (1) Aeronautics.
  - (2) Science Missions Directorate.
  - (3) Human Explorations and Operations.
  - (4) International and Interagency Relations.
- (b) The Associate Administrator.
- (c) The General Counsel.
- (d) The Chief Information Officer.
- (e) Other members may be designated upon specific request of the Chairperson.

[78 FR 5121, Jan. 24, 2013]

#### § 1203.803 Ad hoc committees.

The Chairperson is authorized to establish such ad hoc panels or subcommittees as may be necessary in the conduct of the Committee’s work.

[78 FR 5121, Jan. 24, 2013]